

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARL B. JELLIFF, III,

Petitioner,

04-CV-6526(CJS)(VEB)

-vs-

J. MORRISEY,

Respondent.

DECISION and ORDER
ADOPTING REPORT
and
RECOMMENDATION

Carl B. Jeliff, III ("Petitioner") filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his January 27, 2003, conviction and sentence in Steuben County Court, State of New York. The Court referred the case to the Honorable Victor E. Bianchini, United States Magistrate Judge, for a report and recommendation pursuant to 28 U.S.C. § 636(B)(1). On May 11, 2009, Judge Bianchini filed his Report and Recommendation (Docket No. 11), recommending that the petition be denied on its merits, and that no certificate of appealability be issued. Judge Bianchini directed that any objections to the Report and Recommendation be filed within ten days. On May 11, 2009, the Court mailed the Report and Recommendation to Petitioner. Petitioner did not file objections.

Accordingly, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1)(C), the Court accepts and adopts the Report and Recommendation (Docket No. 11) in its entirety, and, for the reasons stated in the Report and Recommendation, this action is dismissed.

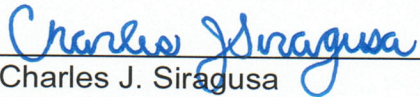
Pursuant to 28 U.S.C. § 2253, the Court declines to issue a certificate of appealability, since Petitioner has not made a substantial showing of the denial of a constitutional right.

Petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a), that any appeal from this Order would not be taken in good faith and leave to appeal to the Court of Appeals as a poor person is denied. *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal *in forma pauperis* should be directed on motion to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

Dated: July 13, 2009
Rochester, New York

ENTER:


Charles J. Siragusa
United States District Judge